DIRECT SELLING ASSOCIATION

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Federal Trade Commission
Office of the Secretary
Room H-113 (Annex C)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: DSA Comments Regarding the Federal Trade Commission's Cooling-Off Rule Regulatory Review, 16 CFR 429, Comment, Project No. P087109

Dear Secretary Clark:

On behalf of the Direct Selling Association (DSA) and its member companies, I am pleased to submit these comments regarding the Federal Trade Commission (the Commission) Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations, 16 CFR 429 hereafter referred to as the Rule or the Cooling-Off Rule. These comments are offered by DSA in response to the Commission's request for public comment contained in the 78 Fed. Reg. 3855 (January 17, 2013).

DSA supports and shares the Commission's goal of preventing abusive high-pressure sales tactics and ridding the marketplace of fraud. We appreciate having an opportunity to participate in the review process for this Rule.

As the Commission is aware, DSA supported the promulgation of the Rule and actively pursued adoption of similar legislative enactments in all 50 states. DSA supports the Commission's suggested amendment to the Rule of increasing the exclusionary limit from $25 to $130.

I. Introduction and General Background

Founded in 1910, DSA is the non-profit national trade association of the leading companies that manufacture and distribute goods and services sold directly to consumers by personal presentation and demonstration, primarily in the home. More than 180 companies are members of the association, including many with well-known brand names. DSA's mission is to protect, serve and promote the effectiveness of member companies and the independent business people they represent. To ensure the marketing

by member companies of products and/or the direct sales opportunity is conducted with the highest level of business ethics and service to consumers, DSA promulgates and oversees an independently administered code of ethics program that protects both customers and salespeople. Approximately 15.6 million individuals were engaged in direct selling with estimated retail sales of $28.56 billion in 2011.[1]

DSA feels very strongly the Rule serves a valuable purpose for consumers. Because DSA is committed to the promotion of the highest ethical standards for the direct selling industry, DSA supported the Rule's original promulgation as a way to mitigate the effects of deceptive and high-pressure sales tactics.

While DSA believes the problems which gave rise to these concerns have largely been eliminated, we also believe the Rule continues to serve the needs of consumers and sellers by enhancing the confidence of consumers in direct selling and serves as an ongoing deterrent to any firm or salesperson tempted to use high-pressure sales tactics. Consumers should enjoy the ease, convenience and simplicity of purchasing in their homes, without fear of being pressured into an irrevocable commitment by virtue of unscrupulous salespersons' unethical practices. Such practices are prohibited by the DSA's own Code of Ethics. While all problems have not been eliminated entirely from the direct selling marketplace, they are now no more of a concern than in other industries due at least in part to the Rule and to DSA's self-regulatory efforts through DSA's independently administered Code of Ethics.

DSA and its member companies take compliance with the Cooling-Off Rule very seriously. In fact, DSA probably does more to promote knowledge and understanding of and compliance with the Rule than any other non-governmental agency. Education regarding the Rule is a key part of the review process that all DSA member companies must undergo before being admitted into membership. It is also part of our periodic review of all current DSA members. As the Commission is aware, the Rule has frequently been part of DSA's educational offerings to its member companies. The Commission has been gracious in providing experts on the topic to give presentations at these meetings.

II. DSA Supports the Commission's Proposal to Raise the Cooling-Off Exclusionary Limit to Reflect Inflation

DSA supports the Commission's proposed amendment to the Cooling-Off Rule to increase the exclusionary limit from $25 to $130 in order to reflect inflation since 1972 and to exempt sales, leases, or rentals of consumer goods or services with purchase prices of less than $130, whether under single or multiple contracts.

When the Cooling-Off Rule was implemented in 1972, it was not intended to apply to purchases of lower-cost items such as make-up, dietary supplements, beverages and the like. Due to inflation, some of these items have increased in price making them subject to the current Cooling-Off Rule, contrary to the original intent of the rule. By increasing the

[1] DSA 2011 Growth and Outlook Survey.

exclusionary limit to $130, these lower-cost items will go back to being excluded from coverage. High-dollar value items, such as vacuum cleaners, cookware and the like would continue to be covered as originally intended.

By increasing the exclusionary limit, the Commission would be simplifying the sale of lower-cost items in that sellers of such items would not be required to provide duplicate receipts and oral disclosures of the consumer's right to cancel the transaction. Numerous direct selling companies have return policies and product guarantees that are more restrictive than the Cooling-Off Rule and consumers would still be afforded these protections should the exclusionary limit increase to $130.

As intended by the Cooling-Off Rule when initially implemented, increasing the exclusionary limit would continue to provide consumers the right to cancel high-dollar value purchases within three days, receive duplicate receipts and oral disclosure of the company's cancellation and return policy.

Finally, the increase in the exclusionary limit would not impact the enforcement of state laws and municipal ordinances. Since the original adoption of the Cooling-Off Rule in 1972, the majority of states have adopted their own laws regarding cooling-off and return policies as the Cooling-Off Rule does not preempt state law. States would still be able to protect consumers by enforcing their existing laws.

III. Permit Alternative Compliance for Companies that Offer 100% Money-back Guarantees and Other Similar Protections

As DSA has proposed in the past, we want to take this opportunity to reiterate our request to the Commission to consider amending the Cooling-Off Rule to permit alternative compliance for those companies that offer 100% money-back guarantees and other similar protections beyond what the Rule requires.

The Commission has made it clear, regardless of a company's cancellation and return policy, the cooling-off notice is required on its receipts. In addition to 100% money-back guarantees, many DSA member companies offer other cancellation and return policies that are far more generous than what is required by the Cooling-Off Rule. Some companies offer one-week, 15-day, 30-day or even longer cancellation periods

Providing notice of both the Cooling-Off Rule notice and the company's cancellation and return policy can be confusing to consumers when they are for different periods of time. Allowing companies the flexibility to substitute their own guarantee or return policy language in their receipts may encourage more companies to provide consumers longer guarantee and return protections than the three days mandated by the Cooling-Off Rule.

To eliminate confusion to consumers, DSA reiterates our recommendation that companies be allowed to substitute the language giving notice of the companies' superior protections for that of the Cooling-Off Rule.

IV. Amend the Practically Unnecessary Two-Receipt Requirement

In previous comments filed by DSA regarding the Cooling-Off Rule, the Association has proposed eliminating the Rule's duplicate receipt requirement. DSA reiterates that recommendation.

When the Rule was initially promulgated in 1972, the duplicate copy requirement was understandable. The most logical manner of cancellation was the mailing of the printed receipt which allowed the consumer to keep a copy. Today, with orders and cancellations being made over the telephone and the Internet, the duplicate receipt is unnecessary. Receipts can be emailed to consumers or saved on websites. The need to hand a consumer a printed receipt is outdated with the advancements in technology since 1972. In fact, retail stores are now offering consumers the option of receiving their receipts via email rather than printing them at the point of sale.

Just as the exclusionary threshold should be increased to reflect inflation since 1972, the duplicate receipt requirement should be eliminated to keep up with technological advances in this new millennium.

V. Conclusion and Summary

In conclusion, DSA fully supports and applauds the Commission's proposal to increase the Cooling-Off Rules' exclusionary limit to $130 to reflect inflation since 1972. DSA believes the proposed amendment strengthens the effectiveness of the Cooling-Off Rule and continues to protect consumers.

Sincerely,

Valerie Hayes, CAE
Senior Director, Global Regulatory Affairs
Direct Selling Association